



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: 2010 FLEET VEHICLES - 32 FORD (RFB 1000000484)		
Doc ID No: MA 758 1000000460 1		Proc Folder: 1652701
Procurement Type: Standard Goods		
Effective Date: 2010-03-12	Expiration Date: 2011-03-11	Not To Exceed Amount
Administered By: Michael Gustafson		Cited Authority: FAP111-35-00-G
Telephone: 502-564-5945		Issued By: Michael Gustafson
V E N D O R	32 FORD MERCURY INC 610 W MAIN ST BATAVIA OH 45103 US	

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	2010 FLEET VEHICLES - 32 FORD	0	0.00		0.00000	0.00	0.00

Extended Description
2010 FLEET VEHICLES - GAS, ALTERNATIVE FUEL, AND ELECTRIC.

PLEASE REFER TO THE MASTER AGREEMENT'S TERMS AND CONDITIONS SECTION (SECTION 8) FOR THE SPECIFICATIONS AND REQUIREMENTS OF THIS FLEET MASTER AGREEMENT. THE MODEL INCLUDED ON THIS MASTER AGREEMENT INCLUDES THE FOLLOWING:

FORD 2010 F-350 CAB & CHASSIS

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MA 758 1000000460
KENTUCKY 2010 FLEET VEHICLES
FORD MODEL INCLUDED: F-350 CAB & CHASSIS
REQUEST FOR BID (RFB) / SOLICITATION # 758 1000000484

VENDOR CONTACT INFORMATION:

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32 FORD MERCURY, INC.
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COMMONWEALTH CONTACT INFORMATION:

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TERMS AND CONDITIONS
MASTER AGREEMENT

Section 1

Scope of Master Agreement

This Master Agreement is for the Vendor to provide the **KENTUCKY FINANCE AND ADMINISTRATION CABINET'S DIVISION OF FLEET MANAGEMENT WITH 2010 AND**

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2011 MODEL YEAR FLEET VEHICLES as well as to other State Agencies and Local Governments (as may be needed). Additional Specification information as to the **FLEET MANAGEMENT 2010 AND 2011 MODEL YEAR FLEET VEHICLES** is available in Section 8 - Specifications.

Section 2

Purpose

The purpose of this Master Agreement is to request that the Vendor provides these items under Master Agreement to the Commonwealth of Kentucky. It also is to provide the minimum specifications and requirements for the purchase of the **FLEET MANAGEMENT 2010 AND 2011 MODEL YEAR FLEET VEHICLES** that meets the needs and desires of the Agency. This Master Agreement establishes essential criteria for the design, performance, capabilities, and appearance of the product or equipment.

Section 3

Initial Master Agreement Period

The Office of Procurement Services (OPS) issues this Master Agreement (MA) for the State of Kentucky. This Master Agreement **shall be for a period of one (1) year from the date of Master Agreement award or the effective date of the Master Agreement.**

Section 4

Renewal Clause

The Master Agreement **may be renewed at the completion of the initial contract period for four (4) additional one (1) year periods.** This renewal shall have the written approval of the Vendor and the Office of Procurement Services (OPS.)

Section 5

Renewal Clause - Optional Renewal Period

As this Master Agreement provides for an optional renewal period, the Commonwealth of Kentucky reserves the right to renegotiate any Terms and / or Conditions as may be necessary to meet the requirements for the extended period. The Vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the Master Agreement in an extended period.

Section 6

Agency and Political Subdivision's Use of the Master Agreement

This Master Agreement shall be for use by the Commonwealth of Kentucky State

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Agencies. Under Kentucky Statutes, provisions are made to allow for use of this Master Agreement by all State Agencies, Local Governments (all Cities and Counties), local School Districts, and Universities.

By responding to RFB 758 1000000484 the Vendor agrees beforehand to offer their services, products, and pricing to other authorized users. These entities may participate in All-State Agency Master Agreements to the same extent as Agencies of the Commonwealth.

Section 7

EEO Requirements (EEO Forms are not required at this time)

The EEO reporting process has been revised to address statutory revisions that took effect June 26, 2007 (reference House Bill (HB) 334.) The revisions include the following:

- 1) increased the \$250,000 contract exemption threshold to **\$500,000** (as such, only Master Agreements or Contracts valued at more than \$500,000 will be subject to contract compliance reviews).
- 2) reduced EEO reporting requirements from twice to **once yearly**.
- 3) **eliminated** the requirement for Vendors to provide detailed information about **each employee** (specifically, the Employee Data Sheet will no longer be a required form).
- 4) clarified that the availability and utilization of female employees will also be used to determine compliance
- 5) clarified that the equal employment provisions may be met, in part, by subcontracting to firms owned by women
- 6) Vendor should continue to send copies of the EEO forms to the Finance and Administration Cabinet's (FAC) Office of EEO and Contract Compliance (EEO / CC) for review and approval. No award will become effective until all forms are satisfactorily submitted and EEO / CC has certified compliance.
- 7) The EEO forms, which must be referenced in Solicitations issued on or after June 26, 2007, are: EEO-1: Employer Information Report; Affidavit of Intent to Comply; and Sub-Vendor Report. **Further, the EEO forms and Bid package letter should be posted on the Web effective June 26, 2007.**

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- 8) Updated Solicitation Language - Changes in EEO reporting requirements also affect the language currently included in Solicitations, etc. **This language must, at a minimum, advise Vendors of the following requirements: Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.**
- 9) Vendors / Vendors must submit the following documents in accordance with the requirements of the Solicitation - EEO-1: Employer Information Report, Affidavit of Intent to Comply and Sub-Vendor Report **OR a copy of the current Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.**
- 10) Vendors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's e-Procurement Web page under Standard Attachments and General Terms at the following site: <https://eprocurement.ky.gov/attachments.htm>.
- 11) Vendors must advise each sub-Vendor with a subcontract of more than \$500,000 - of the sub-Vendor's obligation to comply with the Kentucky EEO Act. Further, Vendors are responsible for compiling EEO documentation from their sub-Vendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance (EEO/CC). (Note: contracts below the second tier are exempt from EEO reporting.)
- 12) Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. **Further, alternate versions of the required documents will not be accepted or processed.**
- 13) Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and / or documentation and to conduct on-site monitoring reviews of project sites and / or business facilities at any point for the duration of any Contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

If the Vendor is exempt from submitting the EEO Forms, the Vendor must state such in its transmittal letter (Section 50.150 of this RFP). Exemption from EEO Form submission, under KRS 45.590, does not obviate any other requirements of KRS 45.570.

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All questions regarding **the EEO forms or contract compliance issues** must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: Finance.ContractCompliance@ky.gov or via telephone at (502) 564-2874 or by fax at (502) 564-1055.

Section 8

2010 and 2011 Fleet Vehicle Specifications and Requirements:

1. **FAC Fleet Management will require all dealers of all models to provide a training course / package for their mechanics on all new models or models that they are not currently trained on. This will be at no cost to Fleet Mgmt. Training may be either at the Dealers location or at the State Service Garage in Frankfort. Online web-based courses will also be an acceptable method of instruction.**
2. ALL Fleet vehicles (cars, pick-ups, passenger and cargo vans, and SUVs) shall come complete with OEM supplied floor mats (front and rear.) Should a model not come with OEM floor mats (possibly due to vinyl flooring), please inform the Commonwealth Buyer.
3. For those vehicles that normally come with the compact or 'donut' size spare tire and wheel, request that the Dealer provide an optional cost of a full size spare should an agency or local government request to order it.
4. **Fuel level - Each Dealer shall provide a ½ tank of fuel measured by the fuel level gauge.**
5. **Where tow packages, heavy-duty suspension / transmission are optional, list those optional prices as well. Utility (front-end bed tool) boxes, bed liners, and service bodies may also be listed as optional items for those applicable models. Some of these optional items may be added at a future date as well.**
6. Dealers shall also provide two (2) functioning key fobs for each vehicle at the time of delivery.
7. Upon delivery of a vehicle, the Dealer shall provide the Certificate of Origin (C of O) and Vehicle Transfer Release (VTR) for the vehicles that are being delivered.
8. The Dealer shall also provide the key codes for each vehicle being ordered. The key code shall be attached to the key ring with the keys and the fob.

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9. Out-of-state Dealers shall include the Vehicle Inspection Fee required for any vehicle purchased in their Bid price. See Question and Response #5 below for more on this issue.

10. The 50 mile radius for delivery is determined from Frankfort. All delivery costs associated with delivering a vehicle within this radius should be included in the base vehicle price. Vendors are authorized to list what mileage rate they would use for deliveries outside of this 50 mile radius. **A new Line Item is added at the bottom of the Vendor Information Sheets after the Optional / Additional Line Items for the Vendor to enter their past-50-mile radius delivery rate (rate is per mile).** This per mile rate is based on an all inclusive 1 way delivery of the vehicle to the ordering customer and for the associated costs of the return trip for the driver, follow-on driver, and vehicle to return them to the Dealer's location. It is recommended that should someone orders either a single, a few, or multiple vehicles that falls outside of this 50 mile radius that the Vendor and the ordering agency agree on this delivery fee before completion of the order.

Fleet Vehicle Specifications by Make and model -

Note - The following information is from previous Fleet Vehicle bids and is information worth repeating for this Master Agreement as it is still applicable.

VENDOR QUESTION #2 -

How many keys are required for each vehicle?

COMMONWEALTH RESPONSE #2 -

The Commonwealth requires a total of FOUR (4) keys per vehicle ordered. The cost for these four (4) keys is to be included in the standard cost of the vehicle. This applies to either the programmable key or the standard, non-programmable key. This also includes those models where the remote is 'built into' the key. **Should additional programmable keys not be available (either from the Manufacturer or the Dealer), the Dealer should inform the Commonwealth Buyer PRIOR to Bid Closing as to which model and the reason(s) for the key non-availability. It will be possible to provide a credit amount on the Catalog of Line Items for two (2) of these keys for Local Governments, Schools, and Universities that require only two (2) keys.**

VENDOR QUESTION #3 -

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How much fuel is required for each gas / diesel powered vehicle? Electric powered?

COMMONWEALTH RESPONSE #3 -

The Commonwealth is requesting that delivery of each vehicle (whether delivered directly from the Dealer's location or should some arrive on a bulk vehicle transport from the Manufacturer's Distribution Center) arrive at the ordering agency's location with one-half (1/2) tank of fuel as measured by the gas gauge. This Specification will be built into the Master Agreement contracts for each model. The Commonwealth believes that this will provide for an adequate fuel level for Fleet Management (and other ordering Agencies / Local Governments) to complete internal vehicle transfer & delivery. This will also allow the Commonwealth to complete the refueling process (from a half tank level up to a full tank level) with fuel at a more advantageous price point for the Commonwealth.

For those electric vehicles, vehicles should arrive with a fully charged battery.

NOTE:

Reference On-Star (or other Manufacturer's version(s) (or GPS systems), the Commonwealth is currently **NOT** ordering vehicles that have these options. At this point, **DO NOT** provide a price for them. If the Manufacturer provides a Credit for deleting it, then provide that Credit amount as an optional Line Item. Should the Commonwealth decide at a later date to procure this type of option(s), then they can be added as an optional Line Item later on in the life of the Master Agreement. The Commonwealth does realize that this option (as maybe others) may be being provided by the Manufacturer as part of a pre-packaged option and it may be unable to delete it without deleting the whole package. It may even be that in order to get that model, that 'option' will come with it, no matter the model level.

Bottom line is, do not provide option pricing at this time for this feature(s). Do provide a credit amount to delete it for those cases where it can be deleted.

VENDOR QUESTION #6 -

Is the 120 days for Delivery negotiable?

Section 18

Equipment Delivery

Unless otherwise specified in this Solicitation, delivery is **REQUESTED** within one hundred twenty (120) calendar days from receipt of Delivery Order after award of Master Agreement.

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COMMONWEALTH RESPONSE #6 -

As stated in the Solicitation Terms and Conditions, Section 18 (partially stated above), vehicle Delivery is **REQUESTED** within the 120 calendar days. The Commonwealth realizes that manufacturer production capacity and other factors all impact the actual delivery time. The intent of having a requested delivery time is to ensure that the vehicles get ordered in a timely manner and that once delivered to the Dealer, they get delivered to the Commonwealth in a timely manner. The 1% penalty per calendar day (as stated in the last paragraph of Section 16 - Delivery, below) is to protect the Commonwealth from 'unreasonable delays' in the ordering or the delivering of the vehicles. A new requirement as a result of the Vendor Pre-Bid Conference is that the Commonwealth will require the Dealer to provide back to the ordering Agency the VIN for the vehicle(s) ordered within 10 calendar days after receipt of the order. This will serve as a follow on that the order was received by the Dealer and entered into the Manufacturer's order system. This VIN can then be used by the Agency to do internal order tracking as to tentative production date, shipment date, and delivery date. This VIN can be written on the Delivery Order and faxed back to the ordering Agency. The Commonwealth will **STRONGLY encourage** that ordering Agencies fax their Delivery Orders to the Dealer, to the attention of the Dealer's point of contact, as well as to make a follow up call to tell the Dealer the order was faxed. This should ensure no orders get 'sent but not received.'

VENDOR QUESTION #7 -

Section 16 states that vehicles have to be delivered within 120 days. The Manufacturer typically runs 90 - 120 days, will this be a problem?

In this same Section, there is clause that states if we cannot produce the vehicle in a reasonable amount of time, the Vendor will pay the difference between the order price and the out of stock price. Could you please clarify this?

COMMONWEALTH RESPONSE #7 -

Please refer to the above Question and Answer for more guidance on the 120 day **REQUESTED** Delivery time. Dealers will not be penalized for manufacturing delays. Again, the Commonwealth's intent is to be able to get timely deliveries all things being considered.

As to the paying the difference as discussed in the second paragraph of Section 16, this language means that if a vehicle has been ordered with a valid Delivery Order, **and the Vendor does not delivery it in the 120 calendar days, or a timely manner that has been discussed and agreed upon by the ordering Agency and the Dealer**, then the

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Commonwealth may purchase the same vehicle at another Dealer, and the contracted Dealer would be responsible for the cost difference between the purchase and the contracted price. This would be done most likely only in rare instances. Again, discussions between the Manufacturer, contracted Dealer, ordering Agency, and the Commonwealth Buyer can resolve most delivery issues once they are identified.

Realizing that there are several makes and models up for bid, the Commonwealth used PC Carbook to compile many of the model listings for those vehicles that we order as 'standard' models. It will also list (in most cases) those optional items that we order on a case-by-case basis. PC Carbook was used in order to attempt to make it as easy and clear for those Dealers bidding as to what the Commonwealth is requesting bids on.

VENDER QUESTION #8 -

If we drop ship to any Dealer that is not in Franklin County, does the Sheriff in that county have to sign the release or is the release supposed to come from the Franklin County Sheriff? Is there a specific form that has to be signed and where do we get access?

COMMONWEALTH RESPONSE #8 -

The Commonwealth Buyer contacted the Franklin County Sheriff's office and got the following information:

The vehicles will need to be processed through the County where they will be licensed. For Fleet Management, that will be Franklin County. For Local Governments, Schools, and Universities, that would be their local County Sheriff that would do the paperwork and inspection.

The Franklin County Sheriff requires original documents for the out-of-state title, Vehicle Transfer Record (VTR), and the Certificate of Origin (C of O), and that the documents be signed and notarized. The Franklin County Sheriff charges a \$5 inspection fee PER vehicle and a one time \$10 trip fee if they go to any location other than their office. This fee would be for each visit they made. If the Vendor takes the vehicles to the Sheriff's Office then it is just the \$5 inspection fee PER vehicle. The Sheriff's Office will provide the Dealer with copies of the inspection documents at that time.

Franklin County Sheriff

franklincounty.ky.gov

218 Saint Clair Street

Frankfort, KY 40601-1818

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Phone #: (502) 875-8740
Ms. Tracy Tinch

VENDER QUESTION #9 -

At the Pre-Bid Conference, I think I understood you to say that as far as the 'Electric Vehicles' are concerned Kentucky would be accepting bids at the Manufacturer level. If that is so, should all Bids be submitted by the Manufacturer rather than the Dealer? I'm just trying to see that our bid is submitted properly.

COMMONWEALTH RESPONSE #9 -

It can be done somewhat 1 of 2 ways. The first is that you would Bid it for the Manufacturer (assumption is that no other Dealers would submit a bid on this Bid) and you solely would hold the contract and receive all orders / payments. This is probably the best approach for these electric vehicles at this time.

The 2nd way is that the manufacturer itself could bid on it (and not the Dealer) and the Manufacturer would then get the award. The Manufacturer could 'add' you to the Master Agreement as an Authorized Secondary Vendor (ASV) and then they / you could receive orders / payments. This is how the State has done the Bids / Master Agreements for the tractors, mowers, and backhoes, etc. Should another Dealer come about down the road then the Manufacturer could add them to the ASV list with you. Again, like if a new tractor Dealer started up. Vehicles are a little different than tractors but it could work somewhat the same. The business does get 'spread around' to the Dealers but in a way this makes it easier in the delivering, warranty, repairs, etc. It's easier to drive 50 miles rather than 250 miles for both of the Vendor and the customer. Each of the ASVs would sell the vehicles for the same price bid by the Manufacturer so there wouldn't really be any difference to the State per se. Although service, repairs, help from the Dealer is always important and these things could help make the decision if the State were to buy from Dealer A or Dealer B.

The primary difference in the above is that the current larger auto manufacturers (Chrysler, Chevy, Ford, Toyota) are not set up to (or have a corporate policy of not) enter into a Master Agreement with the State and then add all of their respective Dealerships to it as ASVs like John Deere or Caterpillar would. Since many of the electric vehicle Manufacturers are relatively new (compared to the Big 3) their corporate policy may be different and may allow them to Bid and be awarded a State Fleet Master Agreement. If they would enter into the contract themselves (somewhat representing all of their Dealers), then the State would be inclined to do this Bid like the tractors. 99.9% of the comments received from the Dealers and customers on how the tractors are

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awarded are positive.

For this Bid, in short, it may be better if the Dealer submits the Bid. One caveat though is that if no Dealer submits a Bid and the Manufacturer doesn't submit a Bid, then no award would be made and that product line would not be represented or available. The two parties should coordinate to insure that someone submits the Bid.

VENDER QUESTION #10 -

Reference Section 15 - Fleet Vehicle Specifications and Requirements, #4 - Floor Mats, what if a model doesn't come with any floor mats?

COMMONWEALTH RESPONSE #10 -

Clarification on vehicle floor mats. If the vehicle model has carpet and OEM carpet floor mats, then it should come with OEM carpet floor mats. If the model has a vinyl floor and OEM vinyl floor mats are AVAILABLE from the Manufacturer, then the vinyl floor mats should be priced as an optional item. If floor mats (carpet or vinyl) are NOT available from the Manufacturer, then you would not need to supply them as standard equipment or as an optional item. In this case, please state in the right hand margin on your Vendor Information Sheet that OEM carpet or vinyl floor mats are not available from the Manufacturer.

VENDER QUESTION #11-

Reference Section 15 - Fleet Vehicle Specifications and Requirements, #5 - Spare Tire, what size does the Commonwealth want?

COMMONWEALTH RESPONSE #11 -

If the vehicle comes with a compact (donut) spare tire, but does have a full size spare tire available as an option, then price the full size spare tire as an option. If no full size spare is available from the Manufacturer, then you wouldn't need to provide an option cost. In this case, please state in the right hand margin on your Vendor Information Sheet that no full size spare tire is available from the Manufacturer.

VENDER QUESTION #12 -

Can vehicles be dropped shipped to Fleet Management or to the Kentucky State Police (KSP) Motor Pool facilities?

COMMONWEALTH RESPONSE #12 -

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It is not recommended that the Dealer arrange for a drop shipment in that there are no facilities available for the Dealer to do their Pre-Delivery Inspection (PDI) prior to signing them over to Fleet Mgmt or KSP. Dealers are not able to use any State facility (inside or outside of the facility) to perform this work due to insurance requirements. Plus, in most cases, the vehicle will not have the required amount of fuel at this time. The Dealer must have a designated responsible person present at the time the vehicles are delivered to Fleet Mgmt or KSP. In most cases, the transport driver would not be this person.

At the time the vehicle is delivered, it should already have been inspected, fueled and all appropriate paperwork should be ready to be signed over to the State.

VENDER QUESTION #13 -

How many keys are needed per vehicle?

COMMONWEALTH RESPONSE #13 -

Dealers should include in their base price two (2) sets of keys (to include ignition (starting) and door / trunk lock). They should list as OPTIONAL equipment another 2 sets of keys so that Fleet and others can order a total of four (4) sets of keys. The extra ignition keys must be able to start the vehicle. These 2 or 4 sets of keys should already be programmed at the time of delivery. Should an Agency receive the initial 2 sets at the time of delivery and 6 months later request another 2 sets, then it is understood, that in some cases, the Agency will have to make the 2 original keys and the vehicle available to the Dealer to get the 2 new sets programmed to match the others. Should a particular model not have an ignition key, then a key is not required. This also applies to the key fobs (when available from the Manufacturer) so they are ordered in the same way.

Vendors should also provide the key codes.

VENDER QUESTION #14 -

I have tried to sign in using my password for our Dealership and have not been able to, who do I contact to get this corrected?

COMMONWEALTH RESPONSE #14 -

Contact the Finance Customer Resource Center (CRC) at (877) 973-4357 (HELP) for additional assistance in resetting your login and password or for any other type of website assistance.

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VENDER QUESTION #15 -

Are all vehicles purchased 'Drop Shipped' to a State facility? If not, does the Master Agreement holder deliver the vehicles to multiple locations?

COMMONWEALTH RESPONSE #15 -

The State (primarily Fleet Management and the Kentucky State Police (KSP)) will order vehicles for delivery to Frankfort, KY. Local governments and Schools and Universities will request that the vehicles be delivered to their specific location. Vehicles have not in the past been 'Drop Shipped' but have been delivered to the customer by the Dealer. Please refer to Q&A #5 above for more on this.

VENDER QUESTION #16 -

Does the Dealer negotiate delivery with political subdivisions?

COMMONWEALTH RESPONSE #16 -

Yes, to the extent of a possible delivery fee for those locations outside of a 50 mile radius from Frankfort. An optional Line Item was added to the Vendor Information Sheet for Dealers to enter what this price would be, based on a inclusive per mile rate (1 way to the delivering agency). Please refer to the Buyer's General Comments, Item #3, at the top of this Modification for more information.

NOTE - A Vendor is not required to charge an additional fee for Delivery for these orders.

VENDER QUESTION #17 -

Is there a website that I can view the specs and contract pricing for current models that have Master Agreements?

COMMONWEALTH RESPONSE #17 -

Yes. The FAC eProcurement website contains all of the current Fleet vehicles, base and option information as well as current pricing. Please contact the Finance Customer Resource Center (CRC) at (877) 973-4357 (HELP) or the Buyer for additional assistance with this. The website is at the eMARS Vendor Self Service section from the eProcurement website - <http://eprocurement.ky.gov>, then Public Access, then view Catalog.

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VENDER QUESTION #18 -

The RFB documents indicate the Dealership must complete Form 10A100 Kentucky Tax Registration. Do we have to collect tax on vehicles sold to the State or from any political subdivision?

COMMONWEALTH RESPONSE #18 -

No. Sales taxes are not required to be collected on any vehicle that is sold to the State or Local Governments, Schools, and Universities with these Master Agreements.

#19 - NOTE - For those vehicle models that will be undergoing a model year changeover in the near future, Vendors should not provide a Bid price that is artificially low in order to win the Bid and then anticipate that the price can be 'made up' when the new model year pricing is available. Pricing for new model year vehicles will have to be justified (with Manufacturer pricing information) to show that the model year increase (if there is one) is indeed valid.

Section 9

Equipment Delivery

Unless otherwise specified in this RFB, **Delivery of the Fleet Vehicles is REQUESTED within one hundred twenty (120) calendar days from receipt of Delivery Order after award of Master Agreement.** In some cases, staggered delivery dates may be requested.

When the Fleet Vehicles are not delivered as provided for in this Master Agreement, the Office of Procurement Services (OPS) reserves the right to:

- 1) purchase the item or good on the open market, with any cost in excess of the contract price paid by the Vendor. Failure of the Vendor to meet contract delivery dates may also be cause for cancellation, removal from eligibility for future contracts, or both,

or

- 2) the Vendor agrees that when delivery and / or performance are not made within the contracted due date that one percent (1%) per calendar day will be deducted

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from the Vendor's invoice for each calendar day the Vendor fails to meet the contracted delivery and performance date.

The Commonwealth reserves the right to determine which of the above options is in its best interests.

Delivery shall be between the hours of 8:00 AM and 4:30 PM (prevailing time) weekdays only (Saturday, Sunday, and State Holidays excluded).

Note: No delivery or shipment shall be made against this Master Agreement unless the Vendor has received an official Delivery Order / Purchase Order from an Agency or the proper document from a Local Government, School, or University.

Section 10

Equipment / Condition

Unless otherwise indicated in this Master Agreement, it is understood and agreed that any item offered or shipped on this Master Agreement shall be new and be in good working condition. Any unit failing to meet the foregoing requirements shall be returned to the Vendor, at their expense, and replaced with a new unit.

Section 11

Inspection

All equipment, supplies, and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event equipment, supplies, or services are defective in material or workmanship or otherwise not in conformity with specified specifications or requirements the Commonwealth shall have the right to reject the items or services or require acceptable correction at the Vendor's expense.

Section 12

Equipment Acceptance

Acceptance of the supplies, equipment, or item at the point and time of delivery shall not be interpreted as an indication by the State that the equipment or item received is acceptable. Final acceptance and authorization for payment shall only be given after a thorough inspection has determined that the supplies, equipment, or item is in accordance with the Specifications.

The Vendor is advised that in the event that the delivered supplies, equipment, or item differs in any respect from the Specifications, then, and in that event, payment to the Vendor will be withheld until such time as the Vendor takes necessary corrective action.

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The Office of Procurement Services (OPS) may at its discretion refuse to accept delivery of the supplies, equipment, or item in which case the supplies, equipment, or item shall remain the property of the Vendor and the State shall not be liable for payment of any nature. Should a representative of the State agree to accept any equipment with items of the equipment or parts missing on the condition that said missing items will be furnished by the Vendor, then, and in that event, the Vendor is to understand that payment(s) for the service or equipment will be withheld until the missing items are delivered and / or installed.

Section 13

Payment

Payment shall be made after delivery and acceptance of the supplies or equipment. Partial payments are authorized when multiple items are ordered at one time or under other circumstances when deemed necessary. This is due to possible different number of delivery days.

Under Kentucky Revised Statute (KRS) 45.454 - Penalty for Late Payment, it states - ‘An interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of the goods or services or Vendor’s invoice by a purchasing agency.’ **Payment will be made upon delivery and acceptance of the product.** This time may be different than when an invoice is received. For example, a delivery is ordered on February 1st with delivery scheduled for May 1st. An invoice is mailed and received on Feb 15th stating the 30 days for payment. The delivery is received and accepted at the Agency location on May 1st. Agency payment target date is June 15th (30 working days after receipt of equipment) and not April 2nd (30 working days after the invoice was received.) Should the agency not pay for the delivery until June 30th, the Agency would be liable for the 1% late payment penalty fee. The key date in this issue is the latter of the receipt date of the invoice or the receipt and acceptance date of the equipment. The 30 working day payment window starts on the latter of these two dates.

Example 1 - The equipment is received on May 1st the invoice is received on May 15th, the due date for payment will be 30 working days from the date that the invoice was received.

Example 2 - The invoice is received on May 1st, part of the order is received on May 15th, the remainder of the order is not received until May 30th, and the due date for payment of the invoice is 30 working days from May 30th.

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Example 3 - If any piece of equipment is not correct or if the invoice is not correct, the 30 working days should not start until everything is correct and acceptable.

Section 14

Tax Exempt Status

The Vendor should not include Federal Excise Tax, Kentucky Sales, or Use Tax in pricing or invoicing once an order has been received and invoiced.

Section 15

Post Contract Agreements

This resulting Master Agreement shall constitute the entire agreement between the State and the Vendor. Unless contractually provided, State agencies utilizing this Master Agreement will not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of this Master Agreement. Any such documents so obtained will be non-binding on the State and agents of the State and will be cause for breach of contract.

Section 16

Equipment / New Technology

All products or equipment must be new and / or a current model. The Commonwealth recognizes the rapid advancement of technology. If the Vendor can provide new equipment of advanced technology after the award of the Master Agreement, the Commonwealth and the Vendor may choose by mutual agreement to install such equipment.

Section 17

Addition or Deletion of Items or Services to the Master Agreement Catalog

The Office of Procurement Services (OPS) reserves the right to add new and similar items, with the consent of the Vendor, to this Master Agreement. **In this Master Agreement, these additions may include different length wheelbases, cab configurations / options, interior equipment and configurations, box and lift gate sizes / dimensions, etc. in order to allow for modifications to the basic vehicle to be made to accommodate other variations to meet other needs.** The Office of Procurement Services (OPS) will issue a Master Agreement Modification to effect this change.

Section 18

Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the Prices established by this Master Agreement shall remain firm for the contract period subject to the following:

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A: Price Increases: A price increase will not be allowed during the first SIX (6) months of the Master Agreement. **Only TWO (2) Price increases will be allowed during the Master Agreement period.** The Price increase must be based on industry wide price changes. The Vendor must request in writing a Price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the Price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the Price increase is denied, the Vendor may withdraw from the Master Agreement without prejudice upon written notice and approval by the Office of Procurement Services. Provided, however, that the Vendor must continue service, at the Master Agreement prices, until a new Master Agreement can be established (usually within ninety (90) days).

B: Price Decreases: The Master Agreement price shall be reduced to reflect any industry wide price decreases. The Vendor is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: Extended Contract Periods: If the Master Agreement provides for an optional renewal period, a price adjustment may be granted at the time the Master Agreement is renewed, subject to price increase justification as required in Paragraph A 'Price Increases' as stated above.

Section 19

Quantity Basis of Contract - Estimated Quantities

Any and all quantities mentioned in Request For Bid (RFB) / Solicitation RFB 758 1000000484 are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of this Master Agreement. Requirements may exceed the quantities shown and the Vendor shall be required to furnish all requirements shown on Delivery Orders or Purchase Orders dated during the life of the Master Agreement.

Section 20

Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the Agency. The Commonwealth of Kentucky reserves the right to contract for large requirements on the open market.

Section 21

Minimum Order Option

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Subject to any specific limitations elsewhere in this Master Agreement, when a State agency requires supplies or services covered by any Master Agreement in a total amount of less than \$1,000, the agency shall not be obligated to place such order under the Master Agreement and retains the option to purchase by other means.

Section 22

Funding-Out Provision

Other provisions of this Master Agreement not with standing, the Vendor agrees, if funds are not appropriated to the Agency or are not otherwise available for the purpose of making payments hereunder, then the Agency shall be authorized, upon sixty (60) calendar days written notice to the Vendor, to terminate this agreement without obligation for the payment of any cancellation or termination charges which may be fixed by the agreement without any other obligation or liability hereunder.

Section 23

Cancellation Clause - 30 Days Notice

The Commonwealth may cancel this Master Agreement by giving written notice thirty (30) calendar days prior to effective cancellation date.

Section 24

Termination of Contracts

The Commonwealth reserves the right to terminate contracts for convenience when requirements under the contract no longer exist. A written notice will be given to the Vendor at least thirty (30) calendar days prior to such proposed termination date.

Section 25

Service Performance

All services performed under this Master Agreement shall be in accordance with the terms and provisions of the Master Agreement. It will be the Agency's responsibility to ensure that such services rendered are performed and are acceptable.

Major deviations of services performed will not be made without the written approval of the Office of Procurement Services (OPS). Problems, which rise under any aspect of performance, should first be resolved between the Vendor and the Agency. Either party should refer, in writing, any such problems and / or disagreements that cannot be resolved to the Office of Procurement Services (OPS) for settlement.

Section 26

Recycle Requirements

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The Vendor is required to comply with Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330. This regulation can be viewed on the Internet at <http://www.lrc.state.ky.us/kar/200/005/330.htm>.

Section 27

Advertising

Each unit shall be entirely free of any and all advertising attachments of the Vendor such as decals, clips, or any other devices bearing Vendor's name or logo.

Manufacturer provided safety, operating instruction, instructional, maintenance, or informational labels are allowed on the equipment.

Section 28

Agreement between Parties

By submitting a response to RFB 758 1000000484, the Vendor acknowledges and agrees to be bound by the terms and conditions of the RFB.

The Vendor agrees that this Master Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Master Agreement. It is further agreed between the parties, that any valid modification of contractual agreement must be formalized by issuance of a Master Agreement Modification from the Office of Procurement Services (OPS).

Section 29

Governmental Restrictions

In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this Master Agreement prior to delivery, it shall be the responsibility of the Vendor to notify the Office of Procurement Services in writing, indicating the specific regulation which requires such alterations. The Commonwealth reserves the right to accept any such alterations, including any subsequent price adjustments, or to cancel the contract.

Section 30

Federal Tax Exempt Purchases by the Commonwealth of Kentucky

Contracts Direct With Manufacturer: In the event a Manufacturer bids direct and is awarded a contract, the Office of Procurement Services shall request the Vendor to furnish evidence of registration with the U.S. Internal Revenue Service. This registration shall be in accordance with the 'Temporary Rules, 1958 Excise Tax Act'. After such

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registration, individual Excise Tax Exemption Certificates are not necessary on each individual order issued against the contract by the Office of Procurement Services. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

Contract With Other Than Manufacturer: If the Vendor is other than the Manufacturer, the Office of Procurement Services will furnish a Tax Exemption Certificate with each individual order issued against this contract. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

Section 31

ALL PROVISIONS OF REQUEST FOR BID (RFB) / SOLICITATION 758 1000000484 SHALL BE PART OF THIS MASTER AGREEMENT.

STANDARD TERMS AND CONDITIONS FOR CONTRACTS AND GRANTS USING ARRA FUNDS

Revised August 14, 2009

PREAMBLE

To the extent that this contract or grant involves the use of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA") funds, the following terms and conditions apply.

For the purposes of applying these terms and conditions, the following definitions apply:

- I. A "prime recipient" is a non-Federal entity that receives Recovery Act funding as Federal awards in the form of grants, loans, or cooperative agreements directly from the Federal government.*
- II. A "subrecipient" is a non-Federal entity that expends Federal awards received from another entity to carry out a Federal program but does not include an individual who is a beneficiary of such a program.*
- III. A "vendor" is defined as a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. Prime recipients or subrecipients may purchase goods or services needed to carry out the project or program from vendors. Vendors are not awarded funds by the same means as subrecipients and are not subject to the terms and conditions of the Federal financial assistance award.*

The vendor or subrecipient specifically agrees to comply with each of the terms and conditions

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contained herein.

The vendor or subrecipient understand and acknowledges that the federal stimulus process is evolving and that new requirements for ARRA compliance may still be forthcoming from federal government and the Commonwealth of Kentucky. Accordingly, the subrecipient/vendor specifically agrees that both it and any subgrantees/subcontractors will comply with all such requirements during the contract period.

AVAILABILITY OF FUNDING

Vendor/subrecipient agrees that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

BUY AMERICAN REQUIREMENT (IF APPLICABLE)

Vendor/subrecipient agrees that in accordance with ARRA, Section 1605, neither vendor/subrecipient or its subcontractors/subgrantees will use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The vendor/subrecipient understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

CONFLICTING REQUIREMENTS

Vendor/subrecipient agrees that, to the extent ARRA requirements conflict with Commonwealth of Kentucky requirements, the ARRA requirements shall control.

FALSE CLAIMS ACT

Vendor/subrecipient agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

ENFORCEABILITY

Vendor/subrecipient agrees that if the vendor/subrecipient or one of its subcontractors/subgrantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of

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Kentucky under all applicable state and federal laws.

INSPECTION OF RECORDS

Vendor/subrecipient agrees that it shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of vendor/subrecipient or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

JOB POSTING REQUIREMENTS

Vendors/subrecipients who receive ARRA funded contracts are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at: <https://e3.ky.gov/>

PROHIBITION ON USE OF ARRA FUNDS

Vendor/subrecipient agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, entities receiving ARRA funds must submit reports to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, each subrecipient agrees to provide the Commonwealth with the following information in a timely manner:

- a. Subrecipient's DUNS number;
- b. Award number or other identifying number assigned by the prime recipient;
- c. The total amount of ARRA funds received by subrecipient during the reporting period;
- d. The amount of ARRA funds that were expended or obligated during the reporting period;
- e. A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - i. the name of the project or activity;
 - ii. a description of the project or activity;
 - iii. an evaluation of the completion status of the project or activity; and
 - iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
 - v. the primary place of performance of the subaward, including the city, state,

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- congressional district and country;
- vi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards.
 - f. Any other information reasonably requested by the Commonwealth or required by state or federal law or regulation.

Each vendor must supply their DUNS number and an estimate of the number of jobs created and number of jobs retained as a result of the award of ARRA funds.

OMB Memorandum M-09-21 dated June 22, 2009 outlines the standard data elements and federal implementation guidance for use in complying with the reporting requirements under Section 1512 of the ARRA.

SEGREGATION OF FUNDS

Vendor/subrecipient agrees that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

SUBCONTRACTOR/SUBGRANTEE REQUIREMENTS

Vendor/subrecipient agrees that it shall include these standard terms and conditions, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

WAGE REQUIREMENTS (IF APPLICABLE)

Vendor/subrecipient agrees that, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html>

WHISTLEBLOWER PROTECTION

Vendor/subrecipient agrees that both it and its subcontractors/subgrantees shall comply with

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Section 1553 of the ARRA, which prohibits all non-federal Vendor/subrecipients of ARRA funds, including the Commonwealth of Kentucky, and all contractors and grantees of the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Vendor/subrecipient agrees that it and its subcontractors/subgrantees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.